

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIASHEILA JACKSON and ALYSIA  
SILVERS,

Plaintiffs,

v.

HOTCHALK, INC.,

Defendant.

Case No. 15-cv-00243 NC

**ORDER TO SHOW CAUSE RE:  
SUBJECT MATTER JURISDICTION**

Re: Dkt. No. 1

Federal courts are courts of limited jurisdiction and are presumptively without jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). In fact, before examining the merits of a case, a court may dismiss an action *sua sponte* for lack of subject matter jurisdiction. *Fiedler v. Clark*, 714 F.2d 77, 78-79 (9th Cir. 1983). Here, while plaintiffs' complaint asserts that jurisdiction is proper under 28 U.S.C. § 1332, there appears to be no basis for this Court's jurisdiction. The Court, therefore, orders plaintiffs Sheila Jackson and Alysia Silvers to show cause why this case should not be dismissed for lack of subject matter jurisdiction.

The Class Action Fairness Act gives federal district courts original jurisdiction over class actions in which the class members number at least 100, at least one plaintiff is diverse in citizenship from any defendant, and the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest and costs. 28 U.S.C. § 1332(d). Notably, CAFA "abandons the complete diversity rule for covered class actions." *Abrego v. Dow Chem.*

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1 Co., 443 F.3d 676, 680 (9th Cir. 2006). As a result, “minimal diversity” is all that CAFA  
2 requires; this exists if “any member of a class of plaintiffs is a citizen of a State different  
3 from any defendant.” 28 U.S.C. § 1332(d).

4 Still, it remains that “[a] party asserting diversity jurisdiction bears the burden of  
5 proof.” *Lew v. Moss*, 797 F.2d 747, 749 (9th Cir. 1986). Moreover, pleading minimal  
6 diversity under § 1332 requires the asserting party to specify the state *citizenship* of the  
7 diverse parties—alleging a party’s *residency* in another state is not enough. *See Kanter v.*  
8 *Warner-Lambert Co.*, 265 F.3d 853, 857-58 (holding that because “the diversity  
9 jurisdiction statute, 28 U.S.C. § 1332, speaks of citizenship, not of residency” the  
10 defendant’s failure to specify state citizenship was “fatal to defendants’ assertion of  
11 diversity jurisdiction”). Residency is inadequate because “a person residing in a given  
12 state is not necessarily domiciled there.” *Id.* (to determine a person’s citizenship, courts  
13 look to a person’s domicile, which is “her permanent home, where she resides with the  
14 intention to remain or to which she intends to return”).

15 Here, plaintiffs’ complaint does not sufficiently allege citizenship to satisfy the  
16 requirement of minimal diversity under CAFA. Although plaintiffs allege that HotChalk is  
17 “a Delaware corporation with its principal place of business” in California, they do not  
18 specify both plaintiffs’ state citizenship. Dkt. No. 1 at ¶ 5. Indeed, while the complaint  
19 asserts, “Silvers is a citizen of the state of California,” it fails to assert whether Jackson is a  
20 citizen of a state different from HotChalk’s state citizenship. Dkt. No. 1 at ¶¶ 2 (“Plaintiff  
21 Sheila Jackson is a resident of Tucson, Arizona.”), 10 (asserting Silvers’ citizenship).  
22 Silvers herself does not satisfy the minimal diversity requirements because she has the  
23 same state citizenship as HotChalk: California. *See* 28 U.S.C. § 1332(c)(1) (a corporation  
24 is deemed to be a citizen of any State by which it has been incorporated and of the State  
25 where it has its principal place of business). Without knowledge regarding the state  
26 citizenship of Jackson, the Court cannot determine whether plaintiffs meet the minimal  
27 diversity requirement under CAFA.

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1 Accordingly, the Court orders plaintiffs to show cause within 14 days, why the  
2 Court should not dismiss this case for lack of subject matter jurisdiction. Alternatively,  
3 plaintiffs may file an amended complaint within 14 days that cures the deficiencies  
4 discussed above. In the meantime, HotChalk's motion to dismiss plaintiffs' complaint  
5 remains under submission. Dkt. No. 19.

6 **IT IS SO ORDERED.**

7 Dated: July 24, 2015

  
NATHANAEL M. COUSINS  
United States Magistrate Judge

United States District Court  
Northern District of California